

EXHIBIT H

In The Matter Of:

ASARCO, LLC

v.

NL INDUSTRIES, INC.

HAWKINS, JOHN - Vol. 1

March 6, 2014

MERRILL CORPORATION

Legalink, Inc.

20750 Ventura Boulevard
Suite 205
Woodland Hills, CA 91364
Phone: 818.593.2300
Fax: 818.593.2301

JOHN HAWKINS - 3/6/2014

Page 1

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

ASARCO, LLC,)	CASE NO. 4:11-CV-00864 JAR
)	
PLAINTIFF,)	VIDEOTAPED DEPOSITION OF
)	JOHN HAWKINS
VS.)	
)	
NL INDUSTRIES, INC.,)	
ET AL.,)	
)	
DEFENDANTS.)	

- - - - -

VIDEOTAPED DEPOSITION OF JOHN HAWKINS,
taken before Kristin M. Teel, RPR, CRR, CSR(IA),
General Notary Public within and for the State of
Nebraska, beginning at 9:01 a.m., on March 6, 2014,
at Thomas & Thomas Court Reporters, 1321 Jones
Street, Omaha, Nebraska.

JOHN HAWKINS - 3/6/2014

Page 2

1 A P P E A R A N C E S

2 FOR THE PLAINTIFF:

MR. MICHAEL L. BELANCIO

3 FOLAND, WICKENS, EISFELDER, ROPER & HOFER

911 Main Street, 30th Floor

4 Kansas City, Missouri 64105

(816)472-7474 FAX (816)472-6262

5 mbelancio@fwpcclaw.com

6 FOR THE DEFENDANT UNION PACIFIC RAILROAD COMPANY:

MS. CAROLYN L. MCINTOSH

7 MS. MAXINE MARTIN (VIA TELEPHONE)

PATTON BOGGS, LLP

8 1801 California Street, Suite 4900

Denver, Colorado 80202

9 (303)894-6127 FAX (303)894-9239

cmcintosh@pattonboggs.com

10 mmartin@pattonboggs.com

11 MS. MELISSA B. HAGAN

UNION PACIFIC RAILROAD COMPANY

12 1001 McKinney, Suite 500

Houston, Texas 77002

13 mbhagan@up.com

14 MR. NORTON A. COLVIN, JR.

COLVIN, CHANEY, SAENZ & RODRIGUEZ, LLP

15 1201 East Van Buren Street

P.O. Box 2155

16 (956)542-7441 FAX (956)541-2170

na.colvin@rcclaw.com

17

FOR THE DEFENDANT

18 NL INDUSTRIES VIA TELEPHONE:

MR. JOEL L. HERZ

19 LAW OFFICES OF JOEL L. HERZ

3573 E. Sunrise Drive

20 Tucson, Arizona 85718

(520)529-8080

21 joel@joelherz.com

22 A L S O P R E S E N T

23 LISA OLSEN, VIDEOGRAPHER

24

25

1 I N D E X

2	CASE CAPTION	Page	1
	APPEARANCES	Page	2
3	INDEX	Page	3
	TESTIMONY	Page	8
4	REPORTER CERTIFICATE	Page	128

5	DIRECT EXAMINATION:		
6	By Mr. Belancio	Page	8

7 EXHIBITS MARKED

8	Exhibit 56	Notice of Continuation of Deposition	11
9	Exhibit 57	Amended and Restated Articles of Incorporation of Union Pacific Railroad Company	61
10			
11	Exhibit 58	Railroad Atlas of North America	70
12	Exhibit 60	Articles of Merger of Missouri Pacific Railroad Company with and Into Union Pacific Railroad Company	81
13			
14	Exhibit 61	Finance Docket	89
15	Exhibit 62	Deed	93
16			
17	Exhibit 63	Articles of Incorporation of Mississippi River and Bonne Terre Railway	100
18			
19	Exhibit 64	Order	106
20	Exhibit 65	Certificate of Merger	115
21	Exhibit 69	Map	119
22	Exhibit 70	Map	119
23	Exhibit 71	Map	17
24	Exhibit 72	Letter of 3/4/13 and FedEx Receipt	119
25			

JOHN HAWKINS - 3/6/2014

Page 4

1 EXHIBITS (CONT'D) MARKED

2 Exhibit 73 Map 66

3 EXHIBITS PREVIOUSLY MARKED REMARKED

4 Exhibit 1 Defendant Union Pacific's Answer
5 and Affirmative Defenses to
6 Plaintiff's Second
Amended Complaint
(Referred to but not remarked.)

7 Exhibit 13 Letter of 11/20/00
(Referred to but not remarked.)

8 Exhibit 26 Plaintiff's Amended
9 Notice of Deposition 8

10 Exhibit 46 Articles of Association
Missouri Pacific Railroad Company 84

11

12

13 (Previously marked exhibits are not
included with the transcript and were returned to
Mr. Belancio.)

14

15

16

17

18

19

20

21

22

23

24

25

Merrill Corporation - Los Angeles

800-826-0277

www.merrillcorp.com/law

ED_000859_00001514-00006

1 BY MR. BELANCIO:

2 Q. And the first page of that exhibit,
3 Page UP002006, does that show the Missouri Pacific
4 Belmont Branch line in Madison County?

5 A. Yes, it depicts the Missouri Pacific
6 Belmont -- abandoned Belmont Branch line in Madison
7 County.

8 Q. And was the Missouri Pacific Belmont
9 Branch line acquired by Union Pacific?

10 A. No, it was not.

11 Q. Why do you say that?

12 A. The Belmont Branch line was abandoned in
13 1972. Union Pacific acquired Missouri Pacific's
14 assets in 1997.

15 Q. Do you know what sites in southeastern
16 Missouri have been designated as superfund sites by
17 the EPA?

18 A. I do not.

19 Q. More specifically, do you know as to
20 St. Francois County which sites have been designated
21 as superfund sites by the EPA?

22 A. I know that the SEMO site has been
23 designated a superfund site by the EPA.

24 Q. Okay. And what about Madison County?

25 A. I'm not aware of superfund sites in

JOHN HAWKINS - 3/6/2014

Page 21

1 A. In the Belmont line?

2 Q. Yes.

3 A. No, we have no interest in the Belmont
4 right-of-way.

5 Q. Did Union Pacific ever have any operating
6 rights on that line?

7 MS. McINTOSH: Objection: Vague.

8 BY MR. BELANCIO:

9 Q. You can answer.

10 A. Union Pacific never had operating rights
11 on that line.

12 Q. Did one of Union Pacific's predecessors
13 have operating rights on that line?

14 MS. McINTOSH: Objection: Vague.
15 Objection: Protective order.

16 BY MR. BELANCIO:

17 Q. You can answer.

18 A. The Missouri Pacific operated that line.

19 Q. Okay. What about the Missouri River
20 Bonne Terre line? Does Union Pacific currently have
21 any ownership interest in it?

22 MS. McINTOSH: Objection: Vague.

23 THE WITNESS: I'm not aware of a
24 Missouri River Bonne Terre line.

25

JOHN HAWKINS - 3/6/2014

Page 36

1 MS. McINTOSH: Objection: Protective
2 order, vague, calls for a legal conclusion.

3 THE WITNESS: The Crawley Branch was
4 operated by the Mississippi River Bonne Terre. And
5 for a four-year period from 1929 to 1933, it was
6 leased to the Mississippi -- or Missouri Illinois
7 Railroad.

8 BY MR. BELANCIO:

9 Q. When was it abandoned?

10 A. In 1933.

11 Q. And which means of abandonment was
12 utilized?

13 A. The tracks were pulled up. Portions of
14 the line were sold.

15 Q. Was any application made to the ICC at
16 that time?

17 MS. McINTOSH: Objection: Vague.

18 THE WITNESS: I've not seen an
19 application.

20 BY MR. BELANCIO:

21 Q. Does Union Pacific currently have
22 ownership interest in any active railroad in
23 St. Francois County?

24 MS. McINTOSH: Objection: Protective
25 order, vague, ambiguous.

1 THE WITNESS: Yes, it does.

2 BY MR. BELANCIO:

3 Q. Please list them.

4 A. I'm going to -- for the purposes of this
5 answer, I'm going to refer to Exhibit 71.

6 Q. Okay.

7 A. Union Pacific operates the line from
8 Hoffman Junction to Monsanto, from the southern part
9 of Bonne Terre down to Derby Junction, from Bismark
10 to the St. Francois County line. That line runs to
11 St. Genevieve.

12 There are -- on the western edge both of
13 the northwestern and the southwestern parts of
14 St. Francois County, the line from St. Louis to
15 Boldob (ph), the old St. Louis, which was originally
16 built by the St. Louis Iron Mountain Southern
17 Railway, comes into St. Francois County briefly.

18 And I believe that covers Union Pacific's
19 operations in the county.

20 Q. Okay. And if I ask that question as to
21 Union Pacific's operating rights in St. Francois
22 County, would the answer be the same, or would there
23 be more railroads?

24 MS. McINTOSH: Objection: Protective
25 order.

1 THE WITNESS: In St. Francois County
2 I don't believe that UP has operating rights over
3 any other railroad properties, so they would be the
4 same.

5 BY MR. BELANCIO:

6 Q. As to St. Francois County, have we
7 discussed -- or have you name -- let me rephrase
8 that.

9 In St. Francois County have you named all
10 of the lines that Union Pacific has abandoned?

11 MS. McINTOSH: Objection: Protective
12 order, vague.

13 THE WITNESS: Union Pacific has only
14 abandoned one line in St. Francois County, and that
15 would be the 1.1-mile segment in Bonne Terre.

16 BY MR. BELANCIO:

17 Q. And with the lines that you've listed
18 before in mind, was that list complete as to the
19 lines abandoned by Union Pacific's predecessors?

20 MS. McINTOSH: Objection: Protective
21 order, vague.

22 THE WITNESS: And long. Could you
23 read -- reread that for me?

24 BY MR. BELANCIO:

25 Q. I may need to rephrase it.

1 A. If you'd like to rephrase it, I'll be
2 happy to have it rephrased.

3 Q. Have you named all the abandoned portions
4 of rail lines in St. Francois County that were
5 abandoned by Union Pacific predecessors?

6 MS. McINTOSH: Objection: Protective
7 order, calls for a legal conclusion.

8 THE WITNESS: I don't believe that we
9 discussed the line from Derby Junction down to
10 Turpin. I named that originally, but I don't
11 believe we've discussed that.

12 BY MR. BELANCIO:

13 Q. What year was that abandoned?

14 A. That was abandoned in sections. The
15 Derby Junction -- I'm going to refer to Exhibit 2
16 again.

17 Q. Exhibit 71?

18 A. Exhibit 71, Page 2.

19 Between Derby Junction and Turpin, that
20 was abandoned in 1941.

21 Q. By whom?

22 A. 1941, that would have been the Missouri
23 River -- or, excuse me, Mississippi River
24 Bonne Terre Railroad, which at that point in its
25 existence was under lease to the Missouri Illinois

1 Railroad.

2 Q. And are both of those companies
3 predecessors of Union Pacific?

4 MS. McINTOSH: Objection: Protective
5 order, calls for a legal conclusion.

6 THE WITNESS: The Mississippi --
7 assets of the Mississippi Bonne Terre were
8 ultimately purchased by the Missouri Illinois. Some
9 of those assets were ultimately purchased by the
10 Missouri Pacific. Some of those assets ultimately
11 became Union Pacific.

12 BY MR. BELANCIO:

13 Q. Do you understand what railroad banking
14 is?

15 A. I have a working knowledge of that.

16 Q. What is your understanding of it?

17 A. It is a means to cease railroad
18 operations. It's a form of abandonment that
19 preserves the corridor for potential future
20 reactivation of rail line.

21 Q. When I discussed abandonment, were any of
22 those lines you listed banked?

23 MS. McINTOSH: Objection: Vague.

24 THE WITNESS: Not to my knowledge,
25 no.

1 BY MR. BELANCIO:

2 Q. Okay. Did Union Pacific ever have any
3 operating rights on that railroad?

4 MS. McINTOSH: Objection: Protective
5 order, vague, calls for a legal conclusion.

6 THE WITNESS: Union Pacific never had
7 operating rights on that line.

8 BY MR. BELANCIO:

9 Q. Okay. Did one of Union Pacific's
10 predecessors have operating rights on that line?

11 MS. McINTOSH: Objection: Protective
12 order, vague, calls for a legal conclusion.

13 THE WITNESS: Yes. Missouri Pacific
14 operated that line.

15 BY MR. BELANCIO:

16 Q. Was that line banked in any way?

17 MS. McINTOSH: Objection: Vague,
18 calls for a legal conclusion, assumes facts not in
19 evidence.

20 THE WITNESS: Not to my knowledge.

21 BY MR. BELANCIO:

22 Q. Do you know what areas of St. Francois the
23 EPA -- St. Francois County the EPA has defined as a
24 superfund site?

25 A. I've not seen a definition of all the

1 there. All right.

2 THE WITNESS: I'm sorry, Joel, I
3 haven't spoken up very well.

4 MR. HERZ: That's much better. I
5 really appreciate it. Thank you so much.

6 THE WITNESS: Excellent.

7 BY MR. BELANCIO:

8 Q. Okay. Are you aware of any abandoned
9 lines that are contiguous with any SEMO sites?

10 MS. McINTOSH: Objection: Vague,
11 calls for a legal conclusion.

12 THE WITNESS: I have only researched
13 the lines of Union Pacific and railroads that
14 operated in the corporate chain.

15 I've only -- more specific, I've looked at
16 Union Pacific, Missouri Pacific, Mississippi River
17 Bonne Terre, Missouri Illinois, Illinois Southern,
18 and St. Louis Iron Mountain Lines with respect to
19 historic operations.

20 BY MR. BELANCIO:

21 Q. Okay. With that in mind, can you answer
22 my question as to those railroads?

23 A. So your question --

24 MS. McINTOSH: Obj- --

25 THE WITNESS: -- as to those

1 railroads would be?

2 MS. McINTOSH: Object --

3 THE WITNESS: Sorry.

4 MS. McINTOSH: Yeah. Objection:
5 Vague.

6 THE WITNESS: Could you repeat --
7 could you rephrase your question with respect to
8 those railroads?

9 BY MR. BELANCIO:

10 Q. Which abandoned lines in respect to those
11 railroads ran contiguous to any SEMO sites?

12 MS. McINTOSH: Objection: Vague,
13 calls for a legal conclusion, ambiguous.

14 THE WITNESS: Based on the records I
15 reviewed, I identified three locations that
16 approached, were proximate to SEMO sites.

17 BY MR. BELANCIO:

18 Q. Before I ask you what those were, did
19 you -- as to the same set of railroads that you've
20 reviewed, did any of those abandoned lines run
21 through SEMO sites?

22 MS. McINTOSH: Objection: Vague,
23 calls for a legal conclusion.

24 THE WITNESS: There's a -- there's a
25 timing element here. The property that the

1 railroads operated on and the appearance of tailings
2 piles, which in St. Francois County is what we're
3 generally talking about, it's difficult to
4 understand the timing between those.

5 So the railroad -- a railroad may have
6 owned property at some point that got close to or
7 entered what is now a tailings pile, but it's hard
8 to tell what the --

9 BY MR. BELANCIO:

10 Q. Right. And --

11 A. -- period of that was.

12 MS. McINTOSH: Excuse me. He was
13 completing his answer. Allow him to complete,
14 please.

15 THE WITNESS: No. I -- I -- so
16 it's -- it's difficult to -- railroads and tailing
17 piles are fundamentally incompatible with each
18 other, but -- you can't really run a train through a
19 tailings pile. So having an active railroad in a
20 tailings pile just doesn't work very well.

21 BY MR. BELANCIO:

22 Q. Irrespective of timing, did any of the
23 abandoned lines of the railroads that you've
24 researched run through SEMO sites?

25 MS. McINTOSH: Objection: Protective

1 order, compound, vague, calls for speculation.

2 THE WITNESS: No, they did not run
3 through a SEMO site.

4 BY MR. BELANCIO:

5 Q. Let's talk about the three that you
6 discussed ran contiguous or near SEMO sites. Please
7 list them.

8 A. Okay. The three locations were -- and I
9 will -- I'll list them. If you wish to discuss
10 further, we can do so.

11 Q. Thank you.

12 A. Would be the North Bonne Terre at Leadwood
13 and at Columbia Mine, which is near Flat River.

14 Q. As to the first in North Bonne Terre,
15 which rail -- which company was it?

16 MS. McINTOSH: Objection: Vague.

17 THE WITNESS: I don't understand your
18 question.

19 BY MR. BELANCIO:

20 Q. Let me rephrase that entirely.

21 In regard to the North Bonne Terre, is
22 that on an active line or an abandoned line?

23 MS. McINTOSH: Objection: Vague.

24 THE WITNESS: The -- the location
25 they identified as near a tailing pile in

1 There's more stations represented.

2 Q. Understood. More detail, not necessarily
3 inconsistent.

4 Okay. We'll move on.

5 Can you flip to the next page of
6 Exhibit 58, which has on it -- it should be Page 15
7 of 30.

8 A. Oh, I'm sorry.

9 Q. And it should have a Map Mo-18a. Do you
10 see that map?

11 A. I do.

12 Q. Are any of the areas depicted in that map
13 within the SEMO mining district sites?

14 MS. McINTOSH: Objection: Vague.

15 THE WITNESS: This -- this map does
16 include the three points that I referenced earlier
17 at Hoffman and Bonne Terre and Columbia Mine.

18 There are other railroads on this map --
19 railroad lines on this map that I have not
20 researched, so those are the only three I can speak
21 to.

22 BY MR. BELANCIO:

23 Q. Do you see the area, that St. Joe Lead
24 federal plant?

25 A. Yes, I do.

1 Q. Okay. Is that within one of the
2 three areas that you mentioned earlier?

3 A. It is not one of the points that I
4 mentioned earlier.

5 Q. Okay. Let's talk about that point.

6 Who owned the line that went to St. Joe
7 federal lead plant?

8 A. I don't know who owned the line; I believe
9 I know the railroad.

10 Q. Okay. Let's talk about it. Who -- what
11 was the railroad?

12 A. The railroad was the Lead Belt Railroad.

13 Q. Okay. And was the Lead Belt Railroad in
14 any way a predecessor of Union Pacific?

15 A. No.

16 MS. McINTOSH: Objection: Protective
17 order.

18 THE WITNESS: No, it was not.

19 BY MR. BELANCIO:

20 Q. Did the Missouri Illinois railroad ever
21 operate on that line?

22 A. Possibly. I have seen a track agreement
23 that allowed them operating rights within that area.

24 Q. Okay. What about the Mississippi River
25 Bonne Terre railroad? Did they ever have operating

1 (Exhibit 60
2 marked for identification.)

3 BY MR. BELANCIO:

4 Q. Do you recognize this document?

5 A. Yes, I do.

6 Q. Have you reviewed it for your deposition
7 today?

8 A. I have reviewed it, yes.

9 Q. Have you read this document?

10 A. I have read it.

11 Q. What is this document?

12 A. These are the articles of merger of
13 Missouri Pacific Railroad Company with and into
14 Union Pacific Railroad Company.

15 Q. Do you have any reason to believe that
16 this document that was filed with the Utah
17 Department of Commerce concerning the mergers of
18 railroads with Union Pacific is not accurate?

19 MS. McINTOSH: Objection: Protective
20 order, calls for a legal conclusion, beyond the
21 scope of Mr. Hawkins' topic.

22 THE WITNESS: I have no reason to
23 believe this in- -- is inaccurate.

24 BY MR. BELANCIO:

25 Q. Did Missouri Pacific Railroad merge with

1 and into the Union Pacific Railroad Company?

2 MS. McINTOSH: Objection: Protective
3 order, calls for a legal -- legal conclusion.

4 THE WITNESS: My understanding is,
5 yes, that it did.

6 BY MR. BELANCIO:

7 Q. And Union Pacific Railroad Company was the
8 surviving corporation, correct?

9 MS. McINTOSH: Objection: Protective
10 order, calls for a legal conclusion.

11 THE WITNESS: That's my
12 understanding, yes.

13 BY MR. BELANCIO:

14 Q. Union Pacific is the corporate successor
15 of Missouri Pacific, correct?

16 MS. McINTOSH: Objection: Protective
17 order, calls for a legal conclusion.

18 THE WITNESS: Union Pacific received
19 certain assets of Missouri Pacific at the merger.

20 BY MR. BELANCIO:

21 Q. And when was this merger effective?

22 A. At 12 noon Eastern Standard Time on
23 January 1, 1997.

24 Q. I'd like to direct you to Page 1695 of
25 that document.

1 some of the previous lines it discussed were from
2 the St. Louis, the Iron Mountain and Southern
3 Railway Company; is that correct?

4 MS. McINTOSH: Objection: Vague,
5 calls for a legal conclusion.

6 THE WITNESS: You mis- -- you
7 misstated the name of the railroad.

8 BY MR. BELANCIO:

9 Q. Okay. What -- please state the proper
10 name of the railroad for me.

11 A. St. Louis Iron Mountain and Southern
12 Railway Company.

13 Q. It's one name?

14 A. Yes.

15 Q. Okay. But Missouri Pacific acquired those
16 specific lines from the St. Louis Iron Mountain and
17 Southern Railway Company; is that correct?

18 MS. McINTOSH: Objection: Calls for
19 a legal conclusion, vague, inconsistent with
20 Deposition Exhibit 46.

21 THE WITNESS: This describes those
22 as -- those lines as of or formerly of that company.

23 BY MR. BELANCIO:

24 Q. On Page 1540, which of those lines listed
25 on that page are located in the area of the SEMO

1 BY MR. BELANCIO:

2 Q. Do you see that the Missouri Illinois
3 Railroad Company purchased at receivership
4 foreclosure sale the railroad of the Illinois
5 Southern Railway Company extending from Salem,
6 Illinois, to Bismark, Missouri?

7 A. Yes, sir.

8 Q. Do you believe that that is accurate?

9 MS. McINTOSH: Objection: The
10 document speaks for itself, calls for a legal
11 conclusion.

12 THE WITNESS: I have no reason to
13 believe it's inaccurate.

14 BY MR. BELANCIO:

15 Q. Do you know whether there's a cur- -- a
16 purchase of stock of the Illinois Southern Railway
17 Company by the Missouri Illinois company?

18 A. I'm sorry. If you could help point to
19 where this is, we could --

20 Q. Let me rephrase and put it another way.

21 A. Okay.

22 Q. Do you have -- if the trustee stated that
23 it was via a purchase of stock, do you have any
24 reason to dispute his statement as inaccurate?

25 MS. McINTOSH: Objection: Calls for

1 C E R T I F I C A T E

2 I, Kristin Teel, a Certified Shorthand
3 Reporter, hereby certify that the witness in the
4 foregoing deposition was by me duly sworn to tell
5 the truth, the whole truth, and nothing but the
6 truth in the within-entitled cause;

7 That said deposition was taken down in
8 shorthand by me, a disinterested person, at the time
9 and place therein stated, and that the testimony of
10 the said witness was thereafter reduced to
11 typewriting, by computer, under my direction and
12 supervision;

13 That before completion of the deposition,
14 review of transcript was requested. If requested,
15 any changes made by the deponent (and provided to
16 the reporter) during the period allowed are appended
17 hereto;

18 I further certify that I am not of counsel
19 or attorney for either or any of the parties to the
20 said deposition, nor in any way interested in the
21 event of this cause, and that I am not related to
22 any of the parties thereto.

23 DATED: March 14, 2014

24
25 KRISTIN TEEL, CRR, RPR, CSR(IA)
CSR NO. 1261